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# Charles Darwin University

## Final Examination

Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 2 Special/Summer Semester, 2017				

LAW514 – Commercial Law	DURATION	
	Reading Time:	10 minutes
	Writing Time:	180 minutes
INSTRUCTIONS TO CANDIDATES		
<p><b>Total marks for this exam: 50 marks.</b></p> <p><b>This exam</b> contains five (5) legal problem solving questions. Each question is worth 10 marks and you must answer each question (<b>total of 50 marks</b>). Identify and discuss all relevant issues and refer to legislation and/or case law to justify your answers.</p>		
EXAM CONDITIONS		
<p><u>You may begin writing from the commencement of the examination session.</u></p> <p>The reading time indicated above is provided as a guide only.</p>		
This is an OPEN BOOK examination		
Any calculator is permitted		
Any handwritten material is permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED	
Any printed material with the exception of CDU Library books	1 x 20 Page Book	

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## Problem-solving Questions

**Total Marks for this section: 50**

All questions should be answered in the Answer Booklet provided.

There are 10 marks for each question. You should aim to write approximately 2-3 pages for each question.

Suggested time to allocate to each question is approximately 35 minutes.

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### **Question 1 [10 marks]**

Sunita Pty Ltd operates a chain of Indian small-goods stores (named 'Sunita's') which make and serve a range of spicy foods for walk-in customers. For the month of December, Sunita stores advertised a 'special customer deal' where customers who purchased the lunch special could also purchase a 'mini-music player' for just a dollar (\$1). Some customers visited Sunita stores in December to inquire about the offer – as some customers thought they could buy a cheap MP3 player. In fact, Sunita was offering small pocket radios for \$1 (Sunita's marketing manager thought the advertisement was reasonable because radios can play music).

Sunita obtained the pocket radios from a Chinese manufacturer at a discounted price and Sunita had nothing to do with their manufacture or assembly. Unfortunately, several customers who took up the deal later complained the pocket radios didn't work properly. It appears that a manufacturing defect caused some of the radios to only work intermittently.

**Are there any actions available to consumers under the *Competition and Consumer Act 2010* (Cth) to bring against Sunita's? What are their prospects of success?**

## Question 2 (Total 10 Marks)

Jamal was interested in purchasing a business class ticket for his flight from Darwin to Delhi over the wet season. As prices can vary between airlines he decided to shop around on the internet first. The best deal he could find was from 'Air Garoupa'. This fare also promised to give benefits in Singapore where he would face a minimum 4 hour wait between connecting flights.

The Air Garoupa salesperson quoted a price of \$1,200 for the return flight. Jamal thought this was relatively cheap and promptly gave his credit card details. Two weeks after he had paid for his return ticket he noticed he had been charged \$1,800 as there were some "unspecified taxes" added to his bill. He had not been directly informed about this by the salesperson when he paid, but when he made further enquiries with Air Garoupa he was told of an exclusion clause that is in all their ticket purchases and readily available on the internet which said: "prices may, from time to time, be subject to change due to unspecified taxes".

**Was there an enforceable contract here? Will Jamal be required to pay the extra \$600 and if so, on what grounds? (NB. You are not required to use Consumer Law in this question).**

### Question 3 [10 marks]

Gong Li, the general manager of a courier business, saw an advertisement by a car dealer in the daily paper advertising '*Great Wall*' automatic sedans at a special low price of \$18,000. Gong Li showed her assistant, James, the advertisement and said to James, 'I give you authority to purchase one of these advertised sedans for the business immediately. We need an efficient new sedan for our small delivery jobs which are growing in number.'

James went to the car dealership, and spoke to the dealer, Martin, and explained that he was buying a car for his employer, Gong Li. James showed Martin his business card (which has the business name – Gong Li & Associates – printed on the card). Martin then explained to James that the Great Wall sedan may be too expensive to run in terms of fuel consumption for intensive use deliveries. Martin recommended a Japanese model which sold for \$23,000 on the basis that this would be a better deal in the longer term. James phoned Gong Li for instructions but was informed that she had been urgently required at a meeting with her main suppliers and could not be contacted for several days. James purchased (on credit) the Japanese sedan and took immediate delivery.

Gong Li upon returning to the office is very upset about the purchase. She has just received a letter from Martin demanding payment for the car.

**Under Agency Law, discuss whether Gong Li may be liable for the payment of the car and whether she could bring an action against James? Your answer must refer to the relevant case law and principles of agency law.**

#### Question 4 [10 marks]

Nur is in the process of buying a new home near a coal-fired power station. It is in an area that has, in the past, been affected by black dust. Because of this history the bank was only prepared to lend him a modest sum of money and the rest he paid from his savings and with financial help from his parents. The bank also strongly recommended, in addition to having mortgage insurance, that he arrange comprehensive insurance to cover him against 'coal dust damage'.

Nur immediately got in touch with his Insurance Company (*General Insurance Company Inc.*). When taking out his policy, Nur disclosed to the insurance company that his land had previously been affected by a coal dust and was told that the company was aware of that fact and that his policy would include cover for property damage 'caused by coal dust'. Within 12 months Nur's house is damaged by a power outage said to be caused by possums running along nearby power lines. General Insurance has rejected Nur's insurance claim on the basis that the damage to his property was not "directly caused" by the coal dust.

**Advise Nur on the key rules of insurance law that relate to this case. Can General Insurance deny Nur's claim? Use relevant insurance law cases to justify your answer. If General Insurance won this case, is there another possible cause of action for Nur? Briefly explain your rationale.**

#### Question 5 [10 marks]

Dilpreet hires Ash's sister Karen as a dancer to entertain patrons at Dilpreet's restaurant. Karen urges Bob, a customer who is celebrating his 60th birthday with his family, to join her in a dance. Bob had been drinking some alcohol but later claims he was not drunk. While vigorously attempting to keep up with Karen, Bob breaks his hip. This has never happened at Dilpreet's restaurant before and it has never happened to Karen either. Bob had no previous history of hip problems.

**Does Bob have an action against Karen in the tort of negligence? Who owed Bob a duty of care? What defence arguments may be used in this scenario? Use relevant cases to support your answers.**

**End of the exam paper**